

ORIGINAL

HYESD 12.6

MARCH 23, 1994

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

IN THE MATTER OF:

THEA FOSS AND WHEELER-OSGOOD WATERWAYS  
OF THE COMMENCEMENT BAY NEARSHORE/  
TIDEFLATS SUPERFUND SITE

CITY OF TACOMA,

RESPONDENT.

Proceeding Under Sections 104, 122(a),  
and 122(d)(3) of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act as amended,  
42 U.S.C §§ 9604, 9622(a),  
9622(d)(3)).U.S. EPA Docket No.  
1093-08-16-104/122ADMINISTRATIVE ORDER  
ON CONSENT FOR  
REMEDIAL DESIGN STUDY

125532

USEPA SF



1101901

TABLE OF CONTENTS

I.	INTRODUCTION . . . . .	3
II.	JURISDICTION . . . . .	4
III.	PARTIES BOUND . . . . .	4
IV.	STATEMENT OF PURPOSE . . . . .	6
V.	FINDINGS OF FACT . . . . .	7
VI.	CONCLUSIONS OF LAW AND DETERMINATIONS . . . . .	14
VII.	NOTICE TO STATE . . . . .	15
VIII.	WORK TO BE PERFORMED . . . . .	16
IX.	MODIFICATION OF WORK PLAN . . . . .	26
X.	QUALITY ASSURANCE . . . . .	28
XI.	PROPOSED REMEDIATION PLAN, PUBLIC COMMENT, ADMINISTRATIVE RECORD . . . . .	28
XII.	PROGRESS REPORTS AND MEETINGS . . . . .	29
XIII.	SAMPLING ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY . . . . .	30
XIV.	DESIGNATED PROJECT COORDINATORS, NOTICES AND SUBMISSIONS . . . . .	34
XV.	OTHER APPLICABLE LAWS . . . . .	37
XVI.	RECORD PRESERVATION . . . . .	37
XVII.	DISPUTE RESOLUTION . . . . .	38
XVIII.	STIPULATED PENALTIES . . . . .	40
XIX.	FORCE MAJEURE . . . . .	43
XX.	REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS . . . . .	45
XXI.	RESERVATION OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS . . . . .	48
XXII.	DISCLAIMER . . . . .	50
XXIII.	OTHER CLAIMS . . . . .	50
XXIV.	FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION . . . . .	51
XXV.	EFFECTIVE DATE AND SUBSEQUENT AMENDMENT . . . . .	54
XXVI.	TERMINATION AND SATISFACTION . . . . .	55

Appendix I - Statement of Work

I. INTRODUCTION

1. This Administrative Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the City of Tacoma (Respondent). The Order concerns the preparation and performance of Remedial Design (RD), and reimbursement of oversight costs. The RD is to be performed for the Remedial Action (RA) of the Head and Mouth of the Thea Foss Waterway problem areas (formerly known as the City Waterway) and Wheeler-Osgood Waterway problem area of the Commencement Bay Nearshore/Tideflats (CB/NT) sediments operable unit (OU 1) of the CB/NT Superfund Site. For purposes of this Order, the Mouth of the Thea Foss Waterway is defined as the portion of the Waterway north of the 11th Street Bridge, and the Head of the Thea Foss Waterway is defined as the portion of the Waterway south of the 11th Street Bridge. Hereinafter when not specifically discussed separately, the Head and Mouth of the Thea Foss Waterway problem areas and the Wheeler-Osgood Waterway problem area will be referred to collectively as the "Waterways" or the "Site."

2. The parties are entering into this Order for mutually beneficial reasons and in the public interest. With the Respondent's consent to this Order, the RD is being initiated approximately six (6) months in advance of EPA's schedule for RD negotiations. Beginning the RD now will expedite the cleanup of the Waterways and minimize the environmental risk to the biological and human populations living in and around the CB/NT environment; facilitate assessment of potential natural resource damages to

enable planning for restoration; and advance the economic development of the City of Tacoma's downtown area in an environmentally sound manner.

## II. JURISDICTION

3. This Order is issued under the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9604, 9622(a), 9622(d)(3), which authorizes the President to issue an order setting forth the obligations of the Respondent with respect to a settlement agreement for action under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987); further delegated to the EPA Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C; and redelegated by the Regional Administrator to EPA Region 10 Superfund Branch Chief on September 27, 1990.

4. Respondent agrees to undertake all activities required by the terms and conditions of this Order. In any action by EPA or the United States to enforce the terms of this Order, Respondent consents to, and agrees not to contest, the authority or jurisdiction of EPA to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms in such an action.

## III. PARTIES BOUND

5. This Order shall apply to and be binding upon EPA and Respondent, its agents, successors, assigns, council or commission,

officers, directors, principals, and employees. Respondent is jointly and severally responsible for carrying out all actions required of it by this Order. The signatory to this Order certifies that he/she is authorized to execute and legally bind the City of Tacoma to this Order. Changes in governmental organization or authorities, in ownership, or in corporate or other legal status, including but not limited to any transfer of assets or real or personal property or business organization, shall in no way alter Respondent's duties under this Order.

6. Respondent shall provide a copy of this Order to any subsequent owners or successors in interest before any ownership rights of any properties within the Site owned by Respondent are transferred. Respondent shall notify EPA at least thirty (30) days prior to any such transfer. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to perform any work under this Order, within fourteen (14) days after the effective date of this Order, or the date such services are retained, whichever is later, and shall condition all contracts entered into hereunder to performance of the work in conformity with the terms of this Order. Any reference herein to the Order shall mean the Order, any Appendix thereto, any future modifications as provided by the terms of the Order as may be added hereafter, and any work plans, reports, plans, specifications, schedules, and appendices required by this Order which, upon approval of EPA, shall be incorporated into and enforceable under the Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order

and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Order.

#### IV. STATEMENT OF PURPOSE

7. In entering into this Order, the objectives of EPA and Respondent are: (a) to design the remedial action for the Thea Foss and Wheeler-Osgood Waterways consistent with the Record of Decision of the Commencement Bay Nearshore/Tideflats (CB/NT) Sediments Operable Unit of the CB/NT Superfund Site that was issued by EPA on September 29, 1989 (the ROD), as may be amended or modified, and perform any analyses and studies needed by EPA, following consultations with Respondent, to approve the design of the remedy for attaining Sediment Cleanup Objectives identified in the ROD, as amended or modified; (b) to collect and present information needed by the federal, tribal, and state natural resource trustees (the Trustees), following consultation with Respondent, to aid the Trustees' determination of injury to natural resources and the assessment of natural resource damages within the Waterways, unless there is a settlement between Respondents and the Trustees that provides otherwise; (c) to establish a cooperative effort to remediate the Thea Foss and Wheeler-Osgood Waterways and avoid expensive and protracted litigation; and (d) provide for recovery by EPA of its response and oversight costs incurred with respect to the implementation of this Order.

8. The activities required by this Order are subject to approval by EPA and shall provide all necessary and appropriate information for the RD, consistent with the ROD, as may be amended

1 or modified , and in accordance with the requirements of CERCLA, as  
2 amended, and the National Oil and Hazardous Substances Pollution  
3 Contingency Plan (NCP), 40 C.F.R. Part 300, as amended. The  
4 activities conducted pursuant to this Order shall be conducted in  
5 compliance with all applicable EPA guidances, policies, and  
6 procedures and, where appropriate, NRDA protocols.

7 9. By entering into this Order, Respondent makes no admission  
8 of fault or liability and does not waive any right, claim, cause of  
9 action or defense, except as specifically provided in this Order.

10 V. FINDINGS OF FACT

11 The following Paragraphs summarize the factual findings made  
12 by EPA in support of the Conclusions of Law and Determinations of  
13 this Order, which Respondent neither admits nor denies.

14 10. The Waterways are within the boundaries of the CB/NT  
15 Superfund Site. The CB/NT Superfund Site is located in Tacoma,  
16 Washington, at the southern end of the main basin of Puget Sound.  
17 The Mouth and Head of the Thea Foss Waterway and the Wheeler-Osgood  
18 Waterway are three (3) of eight problem areas that have been  
19 designed as Operable Unit One (OU 01) of the CB/NT Superfund Site,  
20 which addresses cleanup of 10-12 square miles of shallow water,  
21 shoreline, and aquatic lands located in the industrial tideflats  
22 area of the active commercial seaport of the City of Tacoma. The  
23 marine boundaries of this OU 01 are limited to the shoreline/banks,  
24 intertidal areas, bottom sediments, and water of depths less than  
25 60 feet below mean low low water (MLLW).

26 11. On September 8, 1983, EPA placed the CB/NT Site on the  
27 National Priorities List pursuant to Section 105 of CERCLA, 42

1 U.S.C. § 9605.

2 12. Under a Cooperative Agreement with EPA, the Washington  
3 Department of Ecology (Ecology) conducted a Remedial Investigation  
4 and Feasibility Study (RI/FS) of the CB/NT Site. Within the  
5 Tideflats area of the CB/NT Site, the RI/FS evaluated the nature  
6 and extent of contamination in the Sitcum, Blair, Milwaukee,  
7 Hylebos, St. Paul, Middle, Thea Foss (formerly known as City), and  
8 Wheeler-Osgood Waterways. The final RI/FS was made available for  
9 public comment in February 1989.

10 13. Contaminants were detected in the Mouth of the Thea Foss  
11 Waterway sediments, including but not limited to high molecular  
12 weight polycyclic aromatic hydrocarbons (HPAHs), low molecular  
13 weight polycyclic aromatic hydrocarbons (LPAHS), phenol, biphenyl,  
14 polychlorinated biphenyls (PCBs), zinc and mercury, which are known  
15 to be toxic to humans and marine life and are designated as  
16 hazardous substances under Section 102(a) of CERCLA, 42 U.S.C. §  
17 9602(a), as reported at 40 CFR Part 302.4.

18 14. Contaminants were detected in the Head of the Thea Foss  
19 sediments, including but not limited to zinc, lead, mercury, LPAH,  
20 HPAH, cadmium, nickel, 2 methylphenol, 4- methylphenol, bis [2-  
21 ethylhexyl] phthalate, butyl benzene phthalate and copper, which are  
22 known to be toxic to humans and marine life and are designated as  
23 hazardous substances under Section 102(a) of CERCLA, 42 U.S.C.  
24 § 9602(a), as reported at 40 CFR Part 302.4.

25 15. Industrial facilities and storm drains have served as  
26 sources of contamination to sediments in Thea Foss Waterway by  
27 direct discharges to the Waterway, or groundwater, or surface water



1 runoff into the Waterway.

2 16. Contaminants were detected in the Wheeler-Osgood Waterway  
3 sediments, including but not limited to LPAHs, HPAHs, biphenyl,  
4 phenol, 4-methylphenol, 1-2 dichlorobenzene, copper, lead, zinc,  
5 cadmium and N-nitrosodiphenylamine which are known to be toxic to  
6 humans and marine life and are designated as hazardous substances  
7 under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), as reported at  
8 40 CFR Part 302.4.

9 17. Historic industrial waste streams and disposal  
10 activities and discharges from storm drains were identified among  
11 the sources of contaminants in the Wheeler-Osgood Waterway.

12 18. The RI/FS evaluated contaminants detected at the CB/NT  
13 Superfund Site to identify problem chemicals that pose the greatest  
14 risk to human health and the environment. The technical approach  
15 was to establish information relating specific chemicals to  
16 biological effects in various aquatic organisms and to quantifiable  
17 human health risks. Problem chemicals were defined as those  
18 chemicals whose concentration exceeded the low apparent effects  
19 threshold (AET) in a particular problem area. The AET was defined  
20 as the contaminant concentration above which toxicity or benthic  
21 effects are always observed in a data set developed specifically  
22 for the Puget Sound using three biological effects tests: amphipod  
23 mortality, oyster larvae abnormality, and benthic infaunal  
24 depressions. Human health risks due to the ingestion of  
25 contaminated seafood were estimated using risk assessment methods  
26 and chemical concentrations detected in english sole muscle and  
27 liver tissue and crab muscle tissue. PCBs were the only

1 contaminants for which the human health risk assessment showed a  
2 greater risk than the environmental risk assessment. Sediment  
3 Quality Objectives (SQOs) were developed as the cleanup standards  
4 for the CB/NT site based on the low AET values for chemicals other  
5 than PCBs, and based on the human health risk assessment for PCBs.

6 19. On September 29, 1989, EPA issued a ROD that selected the  
7 remedy for remediation of sediments (OU 01) and sources of  
8 contamination (OU 05) in eight problem areas of the CB/NT Superfund  
9 Site, including the Head and Mouth of the Thea Foss Waterway and  
10 the Wheeler-Osgood Waterway. In the ROD, EPA determined that there  
11 are five (5) major elements of the selected remedy for the Site  
12 sediments and sources that will be applied, as appropriate, to each  
13 problem area:

14 a. Site Use Restrictions - To protect human health by  
15 limiting access to edible resources prior to and during  
16 implementation of source and sediment remedial activities.

17 b. Source Controls - To prevent recontamination of  
18 sediments.

19 c. Natural Recovery - Included as an optional (and  
20 preferred) remediation strategy for marginally contaminated  
21 sediments that are predicted to achieve acceptable sediment quality  
22 through either biodegradation, or burial and mixing with naturally  
23 accumulating clean sediments within a ten year period.

24 d. Sediment Remedial Action - To address sediments  
25 containing contamination that is not expected to naturally recover  
26 within ten years following implementation of all known, available,  
27 and reasonable source control measures. For those areas in which

1 natural recovery will not sufficiently reduce contaminant  
2 concentrations within the ten year period, the ROD required active  
3 sediment cleanup using one of the following four technologies: in-  
4 place capping, dredging and confined aquatic disposal, dredging and  
5 nearshore disposal, or dredging and upland disposal. The ROD  
6 expressed EPA's preference that nearshore disposal be utilized only  
7 in conjunction with otherwise permittable commercial development  
8 projects, and to minimize unnecessary impact to nearshore habitat,  
9 consistent with the provisions of the Clean Water Act, 33 U.S.C.  
10 § 1251 et. seq., (CWA). The disposal option is to be identified  
11 during design of the remedial action.

12 e. Source and Sediment Monitoring - To refine cleanup  
13 volume estimates, characterize the effectiveness of source  
14 controls, and implement long-term monitoring of the sediment  
15 remedial actions(s) to ensure long-term protectiveness of the  
16 remedy.

17 20. Based on an evaluation of biological effects and human  
18 health risks during the RI/FS, the ROD established SQOs at the AET  
19 value for specific chemicals, as set forth in Table 5 of the ROD,  
20 and in Table 2 of the attached Statement of Work (SOW). HPAHS,  
21 cadmium, lead and mercury, which were among the chemicals detected  
22 at the Head of Thea Foss Waterway at levels exceeding the SQOs,  
23 were selected as chemical indicators of the most severe  
24 environmental contamination associated with biological effects and  
25 human health risks at the Mouth. The ROD established the SQOs at  
26 17,000 ug/kg dry weight for HPAHS, 5.1 mg/kg dry weight for  
27 cadmium, 450 mg/kg dry weight for lead and .59 mg/kg dry weight for

mercury. The ROD also determined that natural recovery will not sufficiently reduce contaminant concentrations throughout the Head of the Thea Foss Waterway within the ten-year period, so the ROD required the remedial design consider natural recovery and active sediment cleanup, using the four technology options specified in the ROD as components of the remedy. Mercury and HPAH, which are among the chemicals detected at the Mouth of Thea Foss Waterway at levels exceeding SQOs, were selected as indicators of the most severe environmental contamination associated with biological effects and human health risks at the Mouth of the Thea Foss Waterway. The ROD establishes the SQOs at .59 mg/kg dry weight for mercury and 17, 000 ug/kg dry wt for HPAH. The ROD determined that natural recovery is predicted to eliminate this problem area within 10 years and that modeling and monitoring are necessary to confirm this prediction for the remedial action decision and for long-term monitoring for the remedial action. Zinc and HPAH, which were among the chemicals detected at the Wheeler-Osgood Waterway at levels exceeding the SQOs, were selected as chemical indicators of the most severe environmental contamination associated with biological effects and human health risks at the Wheeler Osgood Waterway. The ROD established the SQOs at 410 mg/kg dry weight for zinc and 17,000 (ug/kg dry weight) for HPAH. The ROD also determined that natural recovery will not sufficiently reduce contaminant concentrations throughout the Wheeler Osgood Waterway within the ten-year period, so the ROD required the remedial design consider natural recovery and active sediment cleanup, using the four technology options specified in the ROD as components of the

remedy.

21. Respondent has owned and operated or owns and operates facilities that have contributed hazardous substances to the Thea Foss Waterway. Respondent owns approximately 27 acres of property on, along and upland from the Thea Foss Waterway which may release hazardous substances to the Waterways. Respondent's property includes ownership of a portion of the Tacoma Coal Gasification site, the former Atlas Foundry site, the Pacific Coast Oil site, the City of Tacoma steam plant site, the Scofield site, and the North Pacific Plywood site. The City has entered into a Memorandum of Agreement with Ecology under which the City will conduct environmental investigations and cleanup, as determined necessary by Ecology, for the sites listed above pursuant to Ecology's authority under the Washington State Model Toxics Control Act, Chapter 70.105D RCW, (MTCA). Contaminants in soils, groundwater, and sediments on these properties include organic and inorganic contaminants, some of which are contaminants found in the Thea Foss Waterway sediments, that are known or suspected to be toxic to humans and marine life and are designated as hazardous substances under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), as reported at 40 CFR Part 302.4. These contaminants may be or may have been released to the Waterways through direct discharge, surface water runoff, groundwater and seeps to pose a threat or potential threat to human health and the environment.

22. Respondent operates and maintains the City of Tacoma storm drain system that discharges to the Waterways. City storm drain #254 discharges to the Wheeler Osgood Waterway and has been

1 determined by EPA and Ecology to be a potential major ongoing  
2 source of contamination to the Waterways. City storm drains #225,  
3 #230, #235, #243, #245, #248, #237a, #237b discharge to the Thea  
4 Foss Waterway. City storm drains #237a, #237b and #230 have been  
5 determined by EPA and Ecology to be potential major ongoing sources  
6 of contamination to the Thea Foss Waterway. Storm drains #237a and  
7 #237b drain approximately 5000 acres of uplands including the  
8 Nalley Valley and South Tacoma, respectively, and discharge to the  
9 Head of Thea Foss Waterway. #230 drains downtown Tacoma and  
10 discharges at S. 15th Street. Data from sediment catch basins and  
11 particulate measurements contained in the City of Tacoma Surface  
12 Water Quality Study (January 1990 Report) show elevated levels of  
13 contaminants in the storm drain discharges, including but not  
14 limited to zinc, LPAH and HPAH.

#### 15 VI. CONCLUSIONS OF LAW AND DETERMINATIONS

16 Based on the Findings of Fact in Section V., EPA makes the  
17 following Conclusions of Law and Determinations, which Respondent  
18 neither admits nor denies.

19 23. The Site is a facility as defined in Section 101(9) of  
20 CERCLA, 42 U.S.C. § 9601(9).

21 24. Substances and constituents thereof at the Site, and  
22 substances otherwise found at the Site and identified in Paragraphs  
23 12-17 above, are hazardous substance(s) as defined in Section  
24 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute  
25 pollutant(s) or contaminant(s) which may present an imminent and  
26 substantial danger to public health or welfare or the environment,  
27 as set forth in Section 104(a)(1) of CERCLA, 42 U.S.C. §

9604(a)(1).

25. The presence of hazardous substances or pollutants or contaminants at the Site, or the past, present or potential migration of hazardous substances or pollutants or contaminants at or emanating from the Site, constitute an actual and/or threatened release as defined in Section 101(22) of CERCLA, 42 U.S.C.

§ 9601(22).

26. Respondent is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21)

27. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and a potentially responsible party within the meaning of Sections 104(a) and 122(d)(3) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(d)(3).

28. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation. Any costs incurred by Respondent in performing the work required by this Order shall be deemed to be Remedial Action Costs, necessary costs of response, and response costs as those terms are used in 42 U.S.C. § 9607(a) and 42 U.S.C. § 9613(f).

#### VII. NOTICE TO STATE

29. By providing a copy of this Order to the State of Washington through its Department of Ecology (Ecology), EPA is notifying the State of Washington that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

VIII. WORK TO BE PERFORMED

30. All work performed pursuant to this Order shall be under the direction and supervision of qualified persons. Within thirty (30) days after the effective date of this Order, and before any work under this Order begins at the Site, Respondent shall submit in writing the names, titles, addresses, and qualifications of all personnel, including contractors, subcontractors, laboratories, and consultants to be used in performing activities pursuant to this Order to EPA. The qualifications of the persons and laboratories undertaking the work for Respondent shall be subject to EPA's review, for verification that such persons and laboratories meet minimum technical background, experience and quality control requirements. EPA may inspect any laboratories used in performing activities pursuant to this Order to verify approved quality assurance procedures and protocols are maintained. If Respondent elects to use any additional contractors, subcontractors, or laboratories subsequent to commencement of activities at the Site, Respondent shall submit the information listed in this paragraph to EPA in writing at least ten (10) days prior to any such use. This Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Order. If EPA disapproves any of Respondent's contractors, subcontractors, or laboratories, Respondent shall make replacement selection(s) within thirty (30) days of receipt of written disapproval from EPA. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order, conduct a complete RD and/or conduct



or authorize any other response activities it deems necessary, and seek costs thereafter and penalties from Respondent. During the course of the RD, Respondent shall notify EPA in writing of any changes or additions in the persons used to carry out such work, providing their names, titles and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

31. The work by the Respondent pursuant to this Order shall be designed to achieve the following standards at the Waterways:

a. Achieve the goals and performance standards of the ROD, including the SQOs set forth in Table 2, and in Section I. of the SOW, as the ROD may be amended or modified.

b. Propose a Remediation Plan that attains applicable or relevant and appropriate substantive requirements under federal, state and tribal environmental laws.

c. Collect and present identified information satisfactory to EPA and the Trustees, following consultation with Respondent, on natural resources within the Waterways for use by the federal, state, and tribal Trustees. Respondent is negotiating with the Trustees a settlement (Natural Resource Settlement) of liability for natural resource damages. If Respondent and the Trustees agree to a Natural Resource Settlement that specifically provides terms to substitute for the collection and presentation of information provided by this Order and the SOW, Respondent may meet its obligations under this Order by demonstrating compliance with the Natural Resource Settlement. Respondent's obligations to collect and present information on natural resources within the Waterways

0710032

1 specified in Paragraphs 32 and other relevant Sections of the SOW  
2 may be subject to change pursuant to a Natural Resource Settlement.

3 d. EPA must assess the potential for marine sediment  
4 recontamination from ongoing discharges to the Thea Foss and  
5 Wheeler-Osgood Waterways during the remedial design phase. In  
6 particular, EPA is concerned about the potential impacts of  
7 Respondent's storm drains #237A and #237B (the twin 96ers).  
8 Respondent concurs in the need for further evaluation of these  
9 storm drains to determine the possibility for sediment  
10 recontamination. Respondent agrees to: (1) develop and propose a  
11 plan for assessing the potential for sediment recontamination,  
12 which plan shall be subject to EPA approval, (2) conduct the work  
13 contained in the approved plan, and (3) prepare a report evaluating  
14 the potential for sediment recontamination as specified in this  
15 Order and SOW, which shall also be subject to EPA approval before  
16 becoming final. Respondent's evaluation of the potential for  
17 sediment recontamination will be conducted pursuant to the  
18 provisions of CERCLA and only for use in connection with EPA's  
19 CERCLA obligations. EPA recognizes that Respondent is pursuing  
20 receipt of its NPDES permit for the storm drains under the Clean  
21 Water Act. EPA recognizes that Respondent and Ecology may negotiate  
22 an Agreed Order to address the Respondent's storm drains. The work  
23 required by this Order and SOW is in addition to, but cannot be  
24 construed to replace, any NPDES requirement or Washington state law  
25 requirement.

26 32. Respondent shall conduct activities and submit  
27

1 deliverables for EPA and, if applicable, Trustee review, comment,  
2 approval, or modification, as provided in the SOW, which is  
3 Appendix I to this Order and is incorporated into, and made an  
4 enforceable part of this Order by this reference. All such work  
5 shall be conducted in accordance with the requirements of CERCLA,  
6 the NCP, and all applicable EPA guidance, including, but not  
7 limited to, the EPA Superfund Remedial Design and Remedial Action  
8 Guidance (RD/RA Guidance), guidances referenced therein, and  
9 guidances referenced in the SOW, as may be amended or modified by  
10 EPA, and identified NRDA protocols. The general activities  
11 Respondent is required to perform are identified below, including  
12 various major deliverables to be submitted by Respondent for EPA  
13 and, if applicable, Trustee review and approval. The specific  
14 tasks Respondent shall perform are described more fully in the SOW  
15 and guidances. All work performed pursuant to this Order shall be  
16 in accordance with the schedules, standards, specifications, and  
17 other requirements of this Order, the Remedial Design Work Plan,  
18 and other deliverables, as initially approved or modified by EPA,  
19 or as may be amended or modified by EPA from time to time following  
20 consultation with Respondent. For purposes of this Order, day  
21 means calendar day unless otherwise noted in the Order.

22 a. Summary of Existing Information. Within sixty (60) days  
23 of the effective date of this Order, Respondent shall submit for  
24 EPA approval a Summary of Existing Information, containing the  
25 information required by Section II.B.2.a. of the SOW. EPA will  
26 cooperate with Respondent and provide environmental information in  
27 its possession, upon the request of Respondent, to accomplish this

task.

b. Remedial Design Work Plan. Within sixty (60) days of the effective date of this Order, Respondent shall submit for EPA approval a RD Work Plan containing the information required by Section II.A.2.a. of the SOW. If required by EPA, Respondent shall submit an addendum to the RD Work Plan after selection of the Remediation Plan for the Waterways to describe its approach to performing the RD.

c. Round 1 Sampling and Analysis Plan (SAP), Quality Assurance Project Plan (QAPP) and Health and Safety Plan (HSP). Within sixty (60) days of the effective date of this Order, Respondent shall submit for EPA approval a Pre-Design Sampling and Analysis Plan (SAP), a Design Quality Assurance Project Plan (QAPP), and a Pre-Design Health and Safety Plan (HSP). The SAP, HSP, and QAPP shall include all elements described in Section II.B.2.b. of the SOW. Following EPA approval, or modification or revision as requested by EPA, the SAP, any supplement to the SAP, the QAPP, and the HSP shall be incorporated in, and made an enforceable part of this Order by this reference.

d. Disposal Site Inventory. Within one hundred twenty (120) days of EPA's approval of the Remedial Design Work Plan, Respondent shall submit for EPA approval a report on its identification of potential disposal sites that meets the requirements of Section II.B.2.c. of the SOW.

e. Round 1 Data Evaluation Report and Round 2 Sampling and Analysis Approach. Within one hundred twenty (120) days after receipt of EPA approval of Round 1 SAP, Respondent shall submit for

1 EPA approval a Round 1 Data Evaluation Report and Round 2 Sampling  
2 and Analysis Approach containing the information required by  
3 Section II.B.2.d. of the SOW.

4 f. Round 2 SAP, HSP, and QAPP. Within thirty (30) days of  
5 EPA's approval of the Round 1 Data Evaluation Report and Round 2  
6 SAP Approach, Respondent shall submit for EPA approval the Round  
7 2 SAP, HSP, and QAPP containing the information required by Section  
8 II.C.2.a. of the SOW, including the natural resource sampling  
9 requirements.

10 g. Technical Memoranda. Within thirty-five (35) days after  
11 sample collection, Respondent shall submit Technical Memorandum 1,  
12 and within sixty (60) days after sample collection, Respondent  
13 shall submit Technical Memorandum 2, both of which shall contain  
14 the information required by Section II.C.2.b.(1) of the SOW.

15 h. Round 2 Data Evaluation Data Report. Within two hundred  
16 and forty (240) days of EPA's approval of the Round 2 SAP,  
17 Respondent shall submit for EPA approval a Round 2 Data Report  
18 containing the information required by Section II.C.2.b.(2). of the  
19 SOW, including evaluation of the natural resource sampling.

20 i. Screening of Remedial Options Report. Within thirty (30)  
21 days of EPA approval of the Round 2 Data Evaluation Report,  
22 Respondent shall submit a Screening of Remedial Options Report  
23 containing information required in Section II.C.2.b.(3). of the  
24 SOW.

25 j. Round 3 SAP, HSP, and QAPP. Within thirty (30) days of  
26 EPA's approval on the Round 2 Data Report, Respondent shall submit  
27 a Round 3 SAP containing information required in Section II.D.2.a.

of the SOW.

k. Round 3 Data Evaluation Report. Within one hundred and twenty (120) days of EPA's approval of the Round 3 SAP, Respondent shall submit a Round 3 Data Evaluation Report containing the information required in Section II.D.2.b. of the SOW.

l. Pre-Design Evaluation Report. Within ninety (90) days after receipt of EPA's approval of the Round 3 Data Evaluation Report, Respondent shall submit for EPA approval a Pre-Design Evaluation Report containing a proposed Remediation Plan and other information required by Section II.D.2.c. of the SOW. Upon approval by EPA, and subject to the dispute resolution procedures contained in Paragraph 33 and Section XVII of this Order, this Report, including the proposed Remediation Plan, will be published for review during a period for public comment.

Following the period of public comment, EPA may select the Remediation Plan that was published for comment or require Respondent to modify or revise the Pre-Design Evaluation Report or proposed Remediation Plan and resubmit either or both to EPA for approval. Upon approval by EPA, the Pre-Design Evaluation Report and the selected Remediation Plan shall be incorporated in, and be an enforceable part of this Order.

m. Remedial Design Submittals. Respondent shall submit all plans, submittals and other deliverables required by Section V of the SOW in accordance with the schedule in Section III of the SOW. Submittals shall include:

i. Preliminary Design Documents. In accordance with the schedule in Section III of the SOW,

Respondent shall submit to EPA for approval the preliminary design documents meeting the requirements specified in Section II.E. of the SOW, including all associated planning documents described in the SOW.

ii. Draft Final/Final Design Documents. In accordance with the schedule in Section III of the SOW, Respondent shall submit draft final design documents, including all associated planning documents, as described in Section II.E. of the SOW, upon completion of approximately 95 percent of the design effort. Within sixty (60) days of receipt of EPA's comments on the draft final design, Respondent will submit final design documents incorporating EPA's comments. Following EPA approval, or modification or revision as required by EPA, the RD Documents shall be incorporated in, and be an enforceable part of this Order. In the event disputes arise concerning the RD documents, Respondent may invoke dispute resolution under Section XVII of this Order.

33. EPA reserves the right to comment on and request modifications or changes for all deliverables. For each and every deliverable, report, memorandum, plan, or other item required under this Order, if EPA comments on and requests modifications or changes of any deliverable, report, memorandum, plan, or other item, in whole or in part, Respondent shall submit a modified or

1 revised version thereof to EPA, which is responsive to all of EPA's  
2 comments and requested modifications or changes, within thirty (30)  
3 days after receiving such request, unless a shorter time is  
4 specified by EPA, but in no event less than seven (7) days. If  
5 Respondent disputes specific EPA comments and requested  
6 modifications or changes, pursuant to Section XVII of this Order,  
7 it must submit a written statement setting forth in detail  
8 Respondent's dispute with EPA's requested modifications or changes  
9 within fourteen (14) days of receipt of EPA's request. The parties  
10 will have fourteen (14) additional days to informally resolve the  
11 dispute. If resolution is not reached within the fourteen (14) day  
12 informal resolution period, Respondent shall modify or change the  
13 subject deliverable, report, plan, or other item in accordance with  
14 EPA's request, or, within two (2) business days, Respondent shall  
15 invoke formal dispute resolution as provided in Section XVII of  
16 this Order.

17 34. EPA reserves the right to stop Respondent from proceeding  
18 at any time, either temporarily or permanently, on any task(s),  
19 activity(s) or deliverable(s) at or relating to the Site and/or the  
20 implementation of this Order.

21 35. If Respondent modifies or revises any deliverable, report,  
22 plan, or other submittal after receipt of EPA comments, directions,  
23 or requirements, and EPA subsequently disapproves the revised  
24 submittal, or if subsequent submittals do not, in EPA's judgment,  
25 adequately address EPA's comments, directions or requirements for  
26 changes, EPA may seek stipulated or statutory penalties; perform  
27 its own studies; complete the RD (or any portion of the RD); and/or



take any response action at the Site it deems necessary, in accordance with its authority, and seek reimbursement from Respondent for its costs therefor; and/or seek any other appropriate relief.

36. In the event EPA takes over or causes others to perform some tasks, but does not remove Respondent's duty to prepare the RD pursuant to this Order, Respondent shall incorporate and integrate information supplied by EPA as directed by EPA.

37. The absence of express EPA comment, approval or disapproval of any submission within any specified time period shall not be construed as approval by EPA. Respondent is responsible for the timely preparation of deliverables acceptable to EPA, subject to the dispute resolution procedures of Section XVII.

38. Respondent shall, prior to the shipment of hazardous substances from the Site to an out-of-state waste management facility, submit written notification, as set forth below, to the appropriate state environmental official in the receiving state, and to the EPA Project Coordinator. This notification requirement shall not apply when the total volume of such a shipment will not exceed ten (10) cubic yards. Notification shall be in writing and shall include: (a) the name and location of the receiving facility; (b) the type and quantity of hazardous substances to be shipped; (c) the expected shipment schedule; and (d) the mode of transportation. Respondent shall submit written notification of any changes in the shipment plan such as a decision to ship the hazardous substances to another facility within the same state, or

to a facility in another state. Notification of the selection of the receiving facility and state shall be made at least thirty (30) days before any hazardous substances are actually shipped.

IX. MODIFICATION OF THE WORK PLAN

39. If at any time, Respondent identifies a need for additional data, Respondent shall submit a memorandum to the EPA Project Coordinator within twenty (20) days after such need has been identified explaining the need for and the nature of the data sought. EPA in its discretion will determine whether the additional data shall be collected by Respondent under this Order or whether it shall be incorporated into reports and deliverables. If, after new data is collected pursuant to this Order or previously unknown circumstances are found, Respondent believes that work contained in the approved Work Plan is unnecessary, Respondent may submit a memorandum to the EPA Project Coordinator providing its rationale along with all supporting data explaining why the approved Work Plan should be modified. EPA, in its discretion, will determine whether the Work Plan will be modified.

40. In addition to the requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, and all other statutory or regulatory reporting requirements, Respondent shall immediately notify EPA and Ecology of any conditions at the Site which may pose an immediate threat to human health or welfare or the environment. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. If, for any reason, the EPA Project Coordinator cannot be reached,

Respondent shall as immediately as possible thereafter notify the EPA Region 10 Superfund Branch Chief, or leave detailed messages with both of their respective offices if neither can be reached. In addition to the authorities of the NCP, EPA may modify or amend any work to be performed pursuant to this Order or require additional work if EPA determines that such modification or amendment is warranted by the immediate threat or in response to unanticipated or changed circumstances that are determined to be posing an imminent and substantial endangerment to human health or welfare or the environment. Respondent shall perform such modified or additional work.

41. EPA may determine that in addition to tasks defined in the SOW and in the approved RD Work Plan, other additional work may be necessary to accomplish the objectives of the RD as set forth in the ROD, this Order, and the SOW. Following consultation with Respondent, EPA may require Respondent to perform such additional work or other response activity in addition to the work initially approved or modified, if EPA determines that such actions are necessary for a complete RD. Respondent may request EPA's written rationale within two (2) days of receipt of EPA's request. Respondent shall confirm its willingness to perform any such additional work in writing within the later of seven (7) days after receiving EPA's request or within two (2) days after receiving EPA's written rationale, if requested, or properly invoke the dispute resolution procedures set forth in Section XVII of this Order. Subject to the resolution of any dispute, Respondent shall implement the additional tasks EPA determines are necessary. The

1 additional work shall be completed according to the standards,  
2 specifications, and schedule set forth or approved by EPA in a  
3 written work plan modification or written work plan supplement.  
4 EPA reserves the right to conduct all or part of such work itself,  
5 to seek reimbursement of costs from Respondent, and/or to seek any  
6 other appropriate relief.

7 X. QUALITY ASSURANCE

8 42. Respondent shall assure that all work performed, samples  
9 taken and analyses conducted, conform to the requirements of the  
10 SOW, the QAPP approved by EPA, and guidances identified therein,  
11 and that all field personnel shall be properly trained for each  
12 task they may perform and in the use of field equipment, including  
13 strict adherence to EPA chain of custody procedures.

14 XI. FINAL REMEDIAL DESIGN, PUBLIC COMMENT,  
15 ADMINISTRATIVE RECORD

16 43. EPA retains full authority and responsibility for all  
17 aspects of public participation as set forth in CERCLA and the NCP,  
18 or as EPA may deem appropriate, including the release to the public  
19 of the Pre-Design Evaluation Report, proposed Remediation Plan and  
20 the final RD Reports. As requested by EPA, Respondent shall  
21 provide information supporting EPA's community relations programs  
22 related to the Site, and shall participate in public meetings which  
23 may be held or sponsored by EPA to explain activities at or  
24 concerning the Site.

25 44. EPA will determine the contents of the administrative  
26 record file for the selection of remedial action. Respondent shall  
27 submit documents developed during the course of the RD to EPA upon

1 which approval of the final remedial design may be based. Upon  
2 request by EPA, Respondent shall submit copies of plans, task  
3 memoranda, including all documentation of field modifications,  
4 recommendations for further action, quality assurance memoranda and  
5 audits, raw data, field notes, laboratory analytical reports, and  
6 other reports to EPA. Respondent shall also submit any previous  
7 studies conducted under state, local or other federal authorities  
8 relating to response selection, and all communications between  
9 Respondent and state, local or other federal authorities concerning  
10 response selection. Respondent may submit comments, including  
11 information and documents during the formal comment period on the  
12 remedial option alternatives, and EPA will include all such  
13 comments and information and documents in the administrative  
14 record. EPA shall maintain a community information repository at  
15 or near the Site to house a copy of the administrative record.

16 XII. PROGRESS REPORTS AND MEETINGS

17 45. Respondent shall make presentations at, and participate in,  
18 meetings and telephone conferences at the request of EPA during the  
19 initiation, conduct, and completion of the RD. In addition to  
20 discussion of the technical aspects of the RD, topics will include  
21 anticipated problems or new issues. Respondent may request a  
22 meeting with EPA at any time in writing along with its stated  
23 purpose. Meetings and telephone conferences will be scheduled at  
24 EPA's discretion.

25 46. In addition to the deliverables set forth in this Order,  
26 until the termination of this Order, Respondent shall provide  
27 written monthly progress reports to EPA by the 10th day of each

month following the effective date of this Order. These progress reports shall: (a) describe the actions which have been taken to comply with this Order during the previous month, (b) include all results of sampling and tests and all other data received by the Respondent, (c) describe all work planned for the next month with schedules relating such work to the overall project schedule, including percentage of completion data; (d) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and all solutions developed and implemented or planned to address any actual or anticipated problems or delays; and (e) include all other elements specified in Section II.A.2.b. of the SOW.

### XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

47. Tabular summaries of all results of sampling, tests, modeling or other data generated by Respondent, or on Respondent's behalf, during implementation of this Order, shall be submitted to EPA in the subsequent monthly progress report as described in Section XII of this Order. All raw data and all laboratory analytical reports shall be submitted to EPA upon its request. EPA will make available to the Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

48. Respondent shall notify EPA and the Trustees in accordance with the provisions of Section XIV of this Order at least fourteen (14) days prior to conducting any field events described in the SOW, RD Work Plan, or any approved sampling and analysis plan. At EPA's or the Trustee's verbal or written request, or the request of

1 their Project Coordinators or designees, Respondent shall allow  
2 split or duplicate samples to be taken by EPA, Ecology, and the  
3 Trustees and their authorized representatives and designees of any  
4 samples collected by the Respondent in implementing this Order.

5 49. EPA, Ecology, and the Trustees and their designated  
6 representatives, shall have full access to, and authority to freely  
7 move about all property at the Site and off-site areas where work  
8 is to be carried out pursuant to this Order, including  
9 laboratories, for purposes of inspecting conditions, activities in  
10 implementing the requirements of this Order, records, operating  
11 logs, and contracts related to the Site or Respondent or its  
12 contractor pursuant to this Order; reviewing the progress of the  
13 Respondent in carrying out the terms of this Order; conducting  
14 tests as they or their authorized representatives or designees deem  
15 necessary; using a camera, sound recording device or other  
16 documentary type equipment; and verifying the data submitted to  
17 them by the Respondent. The Respondent shall allow these persons  
18 to inspect and copy all records, files, photographs, documents,  
19 sampling and monitoring data, and other non-privileged writings  
20 related to work undertaken in carrying out this Order. Copies of  
21 all other non-privileged information or records created, maintained  
22 or received by Respondent or its agents, employees, accountants,  
23 contractors or consultants which is in any way related to the  
24 implementation of this Order, including but not limited to:  
25 contractual documents, invoices, receipts, work orders, disposal  
26 records, and any other records or documents not previously required  
27 herein shall promptly be made available to EPA on request as soon

as practicable, but in any event within thirty (30) days of Respondent's receipt of EPA's request. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All persons with access to the Site under this paragraph shall comply with all approved health and safety plans.

50. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to this Order in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. Part 2, Subpart B. This claim shall be asserted in the manner described by 40 C.F.R. 2.203(b), and substantiated when made. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent.

51. Respondent agrees not to assert any privilege or confidentiality claims with respect to any documents or data related to the RD, Site conditions, sampling, or monitoring if required under or related to this Order, covered by Section 104(e)(7)(F), 42 U.S.C. § 9604(e)(7)(F), or otherwise required to be collected under any local, state or federal law. Respondent, however, reserves the right to assert an evidentiary privilege or protection as to opinions and conclusions of their employees, consultants, attorneys or other agents that were generated at the request of an attorney in anticipation of litigation. In the event this evidentiary privilege or protection is asserted, upon request, Respondent shall provide EPA with the date, author, recipient or addressee, title or description of the subject of the opinion or



1 conclusion and the legal basis for assertion of the privilege or  
2 protection by Respondent.

3 52. Respondent shall not object to EPA's use of any data  
4 gathered, generated, or evaluated by EPA, Ecology, Trustees or  
5 Respondent in the performance or oversight of any work which has  
6 been verified according to the quality assurance/quality control  
7 (QA/QC) procedures, required by this Order, or any EPA-approved  
8 work plan or sampling and analysis plan, or which is contained in  
9 a report submitted by Respondent and approved by EPA under this  
10 Order. If Respondent objects to EPA's use of any other data  
11 relating to the RD, Respondent shall submit a report to EPA which  
12 identifies and explains Respondent's objections, describes any  
13 proposed acceptable uses of the data, and specifically identifies  
14 any proposed limitations on the use of the data. This report must  
15 be submitted to EPA within fifteen (15) days after the monthly  
16 progress report containing the data, or Respondent's opportunity to  
17 object to such data shall be deemed waived.

18 53. If the Site areas that are to be used for access or are  
19 within the scope of the RD, are owned in whole or in part by  
20 parties other than Respondent or the United States, Respondent  
21 shall obtain, or use its best efforts to obtain, written site  
22 access agreement(s) from the present owner(s) within ninety (90)  
23 days of the effective date of this Order. Such agreement(s) shall  
24 provide access for EPA, Ecology and the Trustees, and their  
25 representatives and designees, and Respondent and its authorized  
26 representatives, and shall specify that Respondent is not the  
27 governments' or sovereigns' representatives with respect to any

liability associated with activities required by this Order. Copies of all such agreements shall be provided to EPA prior to the initiation of any field activities. Respondent's best efforts shall, if necessary, include providing reasonable compensation to any property owner for access, except if the property or facility at issue is owned or operated by a potentially responsible party associated with the Waterways as identified and notified by EPA. If Respondent is unable to obtain access agreements within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may obtain access for Respondent, or perform tasks or activities under its own authority, or terminate this Order in the event Respondent cannot obtain access agreements. In the event EPA performs any tasks or activities and does not terminate this Order, Respondent shall perform all other activities not requiring such access, and shall reimburse EPA for all costs EPA incurs in performing any tasks or activities. Respondent shall integrate the results of any tasks or activities undertaken by EPA into Respondent's deliverables. Furthermore, the Respondent agrees to indemnify the United States for any liability arising out of the performance of any such tasks or activities to the extent set forth in Paragraph 97 of this Order. Respondent shall also reimburse EPA for all costs and attorney fees incurred by the United States to obtain access pursuant to this Order.

XIV. DESIGNATED PROJECT COORDINATORS, NOTICES AND SUBMISSIONS

54. On or before the effective date of this Order, EPA and Respondent shall each designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the

implementation of this Order. Respondent's Project Coordinator shall have experience in designing, conducting or overseeing dredging projects involving contaminated sediments. To the extent possible, communications between Respondent and EPA shall be directed to the Project Coordinators by mail, with copies to such other persons as EPA may designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Order.

55. Prior to commencement of any activities at the Site, Respondent shall submit the name, title, qualifications, experience, professional affiliations, and background, of the individual selected as Respondent's Project Coordinator to EPA in writing. EPA and the Respondent have the right to change their respective Project Coordinator. The other party must be notified in writing at least ten (10) days prior to the change.

56. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP, and shall have the authority, in accordance with the requirements of the NCP, to halt any work required by this Order and to take any necessary response action when he or she determines conditions at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Order shall not be cause for any stoppage or delay of any work.

57. EPA will arrange for a qualified person to assist in its oversight and review of the conduct of the RD, as authorized by

Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify any work plan.

58. Documents including work plans, reports, approvals, disapprovals, and other correspondence which must be submitted under this Order, shall be sent to the individuals at the addresses specified below, unless those individuals give written notice of a change to the other parties. Whenever, under the terms of this Order, Respondent is required to provide a document or give notice, either written or oral, to EPA, Respondent shall also provide one (1) copy of such document or such notice to the Lead Natural Resource Trustee. The Lead Natural Resource Trustee shall be the National Oceanic and Atmospheric Administration. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

a. Six (6) copies of documents to be submitted to EPA shall be forwarded to:

Lori Cohen, HW-113,  
U.S. EPA, Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

b. One (1) copy of documents to be submitted to Ecology if requested shall be forwarded to:

Russell McMillan  
Washington Department of Ecology  
Southwest Regional Office  
P.O. Box 47775  
Olympia, Washington 98504

c. One (1) copy of documents to be submitted to the Natural Resource Trustees shall be forwarded to:

Robert A. Taylor  
NOAA

Damage and Restoration Center, N.W.  
7600 Sand Point Way, N.E.  
BIN C15700  
Seattle, Washington 98115

d. Documents to be sent to Respondent shall be forwarded  
to:

Judith Lorbeir  
Environmental Coordinator  
Public Works Department  
City of Tacoma  
747 Market Department, Room 420  
Tacoma, Washington 98402-3769

XV. OTHER APPLICABLE LAWS

59. All actions required to be taken pursuant to this Order shall be performed in accordance with the requirements of all applicable local, state, and federal laws and regulations. No local, state, or federal permit shall be required for any portion of any activity pursuant to this Order conducted entirely on-Site. Off-Site disposal of hazardous substances shall comply with all applicable provisions of CERCLA, RCRA, CWA the implementing regulations respectively thereunder, and EPA guidances and policies.

XVI. RECORD PRESERVATION

60. All records and documents created by Respondent, or on Respondent's behalf, which relate in any way to the implementation of this Order, shall be preserved by Respondent for a minimum of ten (10) years after commencement of construction of any remedial action at the Site. After this ten (10) year period, Respondent shall notify EPA at least ninety (90) days before any records are scheduled to be destroyed. If EPA requests that the documents be saved, Respondent shall, at no cost to EPA, give EPA the documents

1 or true and accurate copies of the documents.

2 XVII. DISPUTE RESOLUTION

3 61. Any disputes concerning activities or deliverables  
4 required under this Order shall be resolved as follows: If the  
5 Respondent objects to any EPA notice of disapproval or requirement  
6 made pursuant to this Order, Respondent shall notify EPA's Project  
7 Coordinator in writing of its objections within fourteen (14) days  
8 of receipt of the disapproval notice or requirement. Respondent's  
9 written objection shall define the dispute, state the basis of  
10 Respondent's objections, and be sent certified mail, return receipt  
11 requested. Except for deliverables subject to the supplemental  
12 dispute resolution procedures in Paragraph 33, EPA and Respondent  
13 have an additional fourteen (14) days from EPA's receipt of  
14 Respondent's notification to informally resolve the dispute. If an  
15 agreement is not reached within this fourteen (14) day period,  
16 Respondent may request a determination by EPA's Region 10 Superfund  
17 Branch Chief. The request by Respondent shall include a written  
18 statement of the dispute, state the basis of Respondent's position  
19 on the matter in dispute, and include any data, analysis or other  
20 materials supporting or defining Respondent's position. If  
21 Respondent does not agree with the Branch Chief's decision, within  
22 seven (7) days of receiving such decision in writing, Respondent  
23 may request a final determination by the Director of the Hazardous  
24 Waste Division, EPA Region 10. The Division Director's written  
25 determination is EPA's final decision, subject only to the right to  
26 appeal certain decisions to the Regional Administrator as provided  
27 in Paragraph 63 below. EPA will make all reasonable efforts to

1 respond promptly to Respondent's objections and requests for  
2 dispute resolution. In the event EPA provides for corrections to  
3 be reflected in the next deliverable and does not require  
4 resubmission of the initial deliverable, stipulated penalties for  
5 the initial deliverable shall cease to accrue on the day of such  
6 decision by EPA. Respondent shall proceed in accordance with EPA's  
7 final decision regarding the matter in dispute, regardless of  
8 whether Respondent agrees with the decision. If Respondent does  
9 not agree to perform or does not actually perform the work in  
10 accordance with EPA's final decision, EPA reserves the right in its  
11 sole discretion to conduct the work itself, to seek reimbursement  
12 from the Respondent, to seek enforcement of the decision, to seek  
13 stipulated penalties, and/or to seek any other appropriate relief.  
14 If EPA seeks enforcement of its decision in court, Respondent may  
15 seek judicial review of EPA's final decision based on the  
16 administrative record. Any judicial review of the dispute shall be  
17 under the arbitrary and capricious standard.

18 62. Respondent is not relieved of its obligations to perform  
19 and conduct activities and submit deliverables in accordance with  
20 any schedules incorporated into or developed pursuant to this  
21 Order, while a matter is pending in dispute resolution. The  
22 invocation of dispute resolution with EPA does not stay stipulated  
23 penalties under this Order.

24 63. Notwithstanding Paragraphs 61 and 62 above, for those  
25 disputes involving EPA comments, modifications, or conclusions  
26 relating to the Sediment Recontamination Evaluation Plan and  
27 Sediment Recontamination Report, or any other major stormwater

1 policy issues, or if the conclusions of the Sediment  
2 Recontamination Report form a basis for EPA delaying remedial  
3 action at the Site, within seven (7) days of the Division  
4 Director's decision, pursuant to Paragraph 61 above, Respondent may  
5 seek review of that decision by the Regional Administrator and may  
6 request a meeting with the Regional Administrator prior to his or  
7 her decision. The Regional Administrator's decision will be in  
8 writing and will be EPA's final decision on these issues.  
9 Respondent may not invoke this additional dispute resolution  
10 process more than twice during the effectiveness of this Order.  
11 With respect to disputes under this Paragraph only, stipulated  
12 penalties shall not accrue during the dispute resolution process.  
13 If Respondent does not agree to perform or does not actually  
14 perform the work in accordance with EPA's final decision, EPA  
15 reserves the right in its sole discretion to conduct the work  
16 itself, to seek reimbursement from the Respondent, to seek  
17 enforcement of the decision, to seek stipulated penalties, as  
18 qualified above, and/or to seek any other appropriate relief.  
19 While a matter is pending in dispute resolution under this  
20 Paragraph, Respondent is not relieved of its obligations to perform  
21 other activities and submit deliverables in accordance with any  
22 schedules incorporated into or developed pursuant to this Order.

23 **XVIII. STIPULATED PENALTIES**

24 64. For each day that Respondent fails to complete a  
25 designated deliverable in a timely manner, fails to produce a  
26 designated deliverable of acceptable quality to EPA, or otherwise  
27 fails to perform in accordance with the requirements of this Order,



CRW 41

Respondent shall be liable for stipulated penalties in accordance with this Section. Penalties, at EPA's discretion, shall begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondent is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue, at EPA's discretion, from the day a violation commences, regardless of when or whether notice is provided. Payment shall be due within thirty (30) days after receipt of a demand letter from EPA.

65. Respondent shall pay interest on the unpaid balance, which shall begin to accrue at the end of the thirty (30) day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondent shall further pay a handling charge of one (1) percent, to be assessed at the end of each thirty-one (31) day period, and a six (6) percent per annum penalty charge, to be assessed if the penalty is not paid in full within ninety (90) days after it is due.

66. Respondent shall make all payments by forwarding a check to:

U.S. Environmental Protection Agency  
Region 10 Superfund Accounting  
P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251

Checks should state the name of the Site, the Site identification number: 10-R9, the account number, and the title and docket number of this Order. A copy of the check and accompanying transmittal

letter shall be forwarded to the EPA Project Coordinator.

68. For the submission of draft and revised deliverables described in Section VIII of this Order, EPA may issue stipulated penalties which shall accrue in the amount of up to: \$1,000 per day, per violation, for the first seven (7) days of noncompliance; \$1,500 per day, per violation, for the eighth (8th) through fourteenth (14th) day of noncompliance; \$3,000 per day, per violation, for the fifteenth (15th) day through the thirtieth (30th) day; and \$6,000 per day, per violation, for the thirtieth (30th) day through the ninetieth (90th) day. If the violation continues beyond ninety (90) days, EPA may continue to assess the \$6,000 daily rate or seek penalties up to the maximum daily statutory rate.

69. For the monthly progress reports required by Paragraph 44, and for any failure to perform in accordance with the requirements of this Order, EPA may assess stipulated penalties which shall accrue in the amount of up to: \$500 per day, per violation, for the first seven (7) days of noncompliance; \$1,000 per day, per violation, for the eighth (8th) through fourteenth (14th) day of noncompliance; \$2,000 per day, per violation, for the fifteenth (15th) day through the thirtieth (30th) day; and \$5,000 per day, per violation, for the thirtieth (30th) day through the ninetieth (90th) day. If the violation continues beyond ninety (90) days, EPA may continue to assess the \$6,000 daily rate or seek penalties up to the maximum daily statutory rate.

70. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under

Section XVII herein. Penalties shall accrue but need not be paid during a properly invoked dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due within thirty (30) days after resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.

71. In the event EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of the initial deliverable, stipulated penalties which may have accrued for the initial deliverable will not be payable.

72. The stipulated penalties provisions of this Order do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Order, including but not limited to EPA conducting all or part of the RD. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Order.

#### XIX. FORCE MAJEURE

73. Force majeure, for purposes of this Order, is defined as any event arising from causes entirely beyond the control of Respondent or any entity controlled by Respondent, including Respondent's agents, consultants, contractors and subcontractors, which delays the timely performance of any obligation under this Order notwithstanding Respondent's best efforts to avoid such delay. The requirement that Respondent use best efforts to avoid the delay includes using best efforts to anticipate potential force majeure events and using best efforts to address the effects of any force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to

the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order, or the financial difficulty of Respondent to perform any such work.

74. If any event occurs or has occurred which may delay the performance of any obligation under this Order, regardless of whether caused by a force majeure event, Respondent shall verbally notify the EPA Project Coordinator or, in his or her absence, the Chief of the Superfund Branch, EPA Region 10, within 48 hours after Respondent knew or should have known that any event would cause a delay. Within seven (7) days thereafter, Respondent shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for the implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether Respondent believes the event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of any delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

75. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event shall be extended by EPA for a period not to exceed the actual duration of the delay attributed to the force majeure event. An extension of the time for performance of the

obligation directly affected by the force majeure event shall not extend the time for performance of any other obligations, except those obligations whose performance is directly related to the extension granted by EPA.

76. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondent as to the appropriate length of any extension due to force majeure, the issue shall be subject to the dispute resolution procedures set forth in Section XVII of this Order. In dispute resolution, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and that Respondent has complied with all of the requirements of Paragraph 73 above.

77. Should Respondent carry the burden set forth in Paragraph 76, the delay at issue shall be deemed not to be a violation of the affected obligation of this Order.

#### XX. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

78. Following the issuance of this Order, EPA shall submit to the Respondent on an annual basis a payment demand, as provided in Paragraph 79 below, and an accounting of all response costs, including oversight costs, incurred by the United States which relate to the RD work under this Order. Such response costs may include, but are not limited to, costs incurred by the United

0117-101

1 States in overseeing Respondent's implementation of the  
2 requirements of this Order, activities performed by the United  
3 States as part of the RD, including any costs incurred to obtain  
4 access, and Area-wide costs attributable to the Waterways, such as,  
5 community relations, source control activities, and PRP search  
6 costs. Additionally, costs shall include all direct and indirect  
7 costs, including but not limited to, time and travel costs of EPA  
8 personnel and associated indirect costs, contractor costs,  
9 cooperative agreement costs, compliance monitoring, including the  
10 collection and analysis of split samples, inspection of RD  
11 activities, Site visits, discussions regarding disputes that may  
12 arise regarding this Order, review and approval or disapproval of  
13 submissions, and costs of doing or redoing any of Respondent's  
14 tasks. Summaries, including EPA's certified Superfund Cost  
15 Organization and Recovery Enhancement System summary report  
16 (SCORES), or such other summary as certified by EPA, shall serve as  
17 a basis for the annual accountings and payment demands by EPA. EPA  
18 will provide supporting documentation for all of its response and  
19 oversight costs that relate to work under this Order within five  
20 (5) months after EPA's approval of Respondent's certification  
21 required by Paragraph 102 of this Order.

22 79. Within thirty (30) days of receipt of each accounting and  
23 payment demand provided in Paragraph 78 above, Respondent shall  
24 remit a certified or cashier's check for the amount of costs set  
25 forth in EPA's payment demand. Respondent shall be obligated under  
26 this Order to pay EPA no more than \$150,000 per year in  
27 reimbursement of EPA's response and oversight costs. All costs

1 incurred by EPA in excess of \$150,000 in any given year that are  
2 not reimbursed by Respondent shall be unreimbursed response and  
3 oversight costs that EPA may seek to recover from Respondent or any  
4 other party pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, as  
5 specified in Paragraph 82 below. If payment is not made within  
6 thirty (30) days of Respondent's receipt of the accounting and  
7 payment demand, Respondent shall pay interest on the unpaid balance  
8 at the rate of interest on investments for the Hazardous Substances  
9 Superfund in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The  
10 interest on the demand amount shall accrue at the rate specified  
11 from the date of Respondent's receipt of the demand through the  
12 date of Respondent's payment. Payments of interest made under this  
13 Paragraph shall be in addition to such other remedies or sanctions  
14 available to EPA by virtue of Respondent's failure to make timely  
15 payments under this Section.

16 80. Checks in payment of Response and Oversight Costs should  
17 be made payable to the Hazardous Substances Superfund and should  
18 state the name of the Site, the Site identification number: 10-R9,  
19 the account number, and the title and docket number of this Order.  
20 Checks should be forwarded to:

21 U.S. Environmental Protection Agency  
22 EPA Region 10 Superfund Accounting  
23 P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251

24 Copies of the transmittal letter and check should be sent  
25 simultaneously to the EPA Project Coordinator.

26 81. Respondent agrees to limit any disputes concerning costs  
27 to accounting errors and the inclusion of costs outside the scope

1 of this Order or not authorized by statute. Any objection to costs  
2 shall specifically identify any contested costs and the basis of  
3 its objection. All undisputed costs shall be remitted by  
4 Respondent in accordance with the procedures in Paragraphs 79 and  
5 80 above. In the event that dispute resolution under Section XVII  
6 is invoked with respect to any cost item, Respondent shall pay  
7 disputed costs into an escrow account while any such dispute is  
8 pending. In any dispute resolution proceeding, Respondent bears  
9 the burden of establishing an EPA accounting error or the inclusion  
10 of any cost outside the scope of this Order or not authorized by  
11 statute. Interest shall accrue during any cost dispute.

12 XXI. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

13 82. EPA reserves the right to bring an action against  
14 Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for  
15 recovery of all response costs incurred by the United States which  
16 are not reimbursed by Respondent, including all past costs,  
17 response and oversight costs, any costs incurred in the event that  
18 EPA performs the RD or any part thereof, and any future costs  
19 incurred by the United States in connection with response  
20 activities under CERCLA at the Site.

21 83. EPA reserves the right to bring an action against  
22 Respondent to enforce any provision or requirement of this Order or  
23 any requirement developed pursuant to this Order, to enforce the  
24 cost reimbursement requirements of this Order, to collect  
25 stipulated penalties assessed pursuant to Section XVIII (Stipulated  
26 Penalties) of this Order, and to seek penalties pursuant to Section  
27 109 of CERCLA, 42 U.S.C. § 9609.



1        84. Except as expressly provided in this Order, each party  
2 reserves all rights and defenses it may have. Nothing in this  
3 Order shall affect EPA's response, enforcement or other statutory  
4 and/or regulatory authority, including the right to perform  
5 response activities or to seek injunctive relief, stipulated  
6 penalties, statutory penalties, and/or punitive damages.

7        85. Following satisfaction of the requirements of this Order,  
8 Respondent shall have resolved its liability to EPA for the work  
9 performed by Respondent pursuant to this Order. Respondent is not  
10 released from any liability, if any, for any response actions taken  
11 beyond the scope of this Order regarding removals, other operable  
12 units, remedial action of the Waterways, or any activities pursuant  
13 to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

14        86. Respondent reserves its right to seek contribution from  
15 other parties for costs incurred by it under this Order. Without  
16 waiving such reservation, Respondent agrees that it will not file  
17 or otherwise initiate a contribution action for its costs incurred  
18 under this Order against any person until after the RD work is  
19 completed, and not before remedial action negotiations are  
20 completed, or receipt of EPA's written notification to terminate  
21 negotiations.

22        87. Nothing in this Order shall be deemed to be a waiver of  
23 Respondent's right to assert the federally-permitted release  
24 defense in a future action with respect to liability for storm  
25 drain discharges. At this time, EPA does not agree that a  
26 federally-permitted release defense is applicable, and does not  
27 waive its right to oppose the assertion of such defense in a future

1 action.

2 XXII. DISCLAIMER

3 88. By signing this Order and taking actions under this Order,  
4 the Respondent is not admitting to or concurring in EPA's Findings  
5 of Fact and Conclusions of Law. Furthermore, the participation of  
6 the Respondent in this Order shall not be considered an admission  
7 of liability and is not admissible as evidence against it in any  
8 judicial or administrative proceeding other than a proceeding by  
9 EPA or the United States to enforce this Order or any judgment  
10 relating to it. Respondent retains its rights to assert claims or  
11 defenses against other potentially responsible parties at the Site  
12 subject to Paragraph 86 above. However, the Respondent agrees not  
13 to contest the validity or terms of this Order, or the procedures  
14 underlying or relating to it in any action brought by the United  
15 States, including EPA, to enforce its terms.

16 XXIII. OTHER CLAIMS

17 89. In entering into this Order, Respondent waives any right  
18 to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C.  
19 § 9606(b). Respondent also waives any right to present a claim  
20 under Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611, 9612.  
21 Respondent further waives all other statutory and common law claims  
22 against EPA, including, but not limited to, contribution and  
23 counterclaims, relating to or arising out of conduct of the RD.  
24 This Order does not constitute any decision on preauthorization of  
25 funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

26 90. Nothing in this Order shall constitute or be construed as  
27 a release from any claim, cause of action or demand in law or

1 equity against any person, firm, partnership, subsidiary or  
2 corporation not a signatory to this Order for any liability it may  
3 have arising out of or relating in any way to the ownership or  
4 operation of a facility that released hazardous substances to the  
5 Site, or to the generation, storage, treatment, handling,  
6 transportation, release, or disposal of any hazardous substances,  
7 pollutants, or contaminants at, from, or taken to the Site.

8 91. Respondent shall not seek to recover any costs or  
9 attorneys fees from EPA or the United States with regard to any  
10 matter connected with implementation of this Order.

11 92. Nothing in this Order shall constitute or be construed as  
12 a release from any claim, cause of action or demand in law or  
13 equity that the Trustees may have against Respondent for any  
14 liability it may have for damages to natural resources in the  
15 Commencement Bay Nearshore/Tideflats Superfund Site pursuant to  
16 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

17 XXIV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

18 93. Respondent shall establish and maintain financial  
19 security for performance of the work and any other obligations  
20 required under this Order, including a margin for cost overruns.  
21 Within thirty (30) days after the approval of the RD Work Plan by  
22 EPA, Respondent shall demonstrate:

23 (a) A current rating for its most recent bond issuance  
24 of no lower than BBB, as issued by Standard and Poor's, or Baa, as  
25 issued by Moody's; and

26 (b) Equity of at least six (6) times the amount of the  
27 performance of the Work that remains to be completed.

94. To demonstrate the financial assurance for performance of the work pursuant to Paragraph 93 of this Order, Respondent shall submit to EPA a copy of an independent certified public accountant's report on examination of Respondent's most recent completed fiscal year. Respondent shall resubmit the information required by Paragraph 93 annually, on the anniversary of the effective date of this Order. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in 40 CFR § 264.143. Respondent's inability to demonstrate financial ability to complete the work shall not excuse performance of any activities required under this Order.

95. (a) Prior to commencement of any work under this Order, Respondent shall secure, and shall maintain in force for the duration of this Order, and for two (2) years after the completion of all activities required by this Order, Comprehensive General Liability ("CGL") and automobile insurance, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of \$1 Million per occurrence, and Umbrella Liability in the amount of \$2 million per occurrence.

(b) Respondent shall also secure, and maintain in force for the duration of this Order and for two (2) years after the completion of all activities required by this Order the following:

(i) Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.

(ii) Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

(c) For the duration of this Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondent, in furtherance of this Order.

(d) If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or with respect to that contractor or subcontractor Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this Order, and annually thereafter on the anniversary of the effective date of this Order, Respondent shall provide to EPA certificates of such insurance and a copy of each insurance policy.

96. At least seven (7) days prior to commencing any work under this Order, Respondent shall certify to EPA that the required insurance has been obtained by that contractor.

97. The Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assignees, or any

persons including, but not limited to, firms, corporations, subsidiaries and contractors of Respondent, in carrying out activities under this Order. The United States Government or any agency or authorized representative thereof shall not be held out as a party to any contract entered into by Respondent in carrying out activities under this Order.

XXV. EFFECTIVE DATE AND SUBSEQUENT AMENDMENT

98. The effective date of this Order shall be the date it is signed by EPA. Except when expressly stated otherwise herein, all time periods referred to in this Order shall be construed as calendar days, rather than business or working days. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event. If the final day of any time period falls on a Saturday, Sunday, or legal holiday, the time period shall be extended to the next day which is not a non-final day.

99. In addition to the procedures set forth elsewhere in this Order, this Order may be amended by agreement between EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign any amendment to this Order.

100. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than monthly progress

reports) specifications, schedules and attachments required by this Order or developed pursuant to this Order, are, upon approval by EPA, incorporated in, and made an enforceable part of, this Order by this reference.

XXVI. TERMINATION AND SATISFACTION

101. This Order shall terminate when either (1) Respondent demonstrates in writing and certifies to the satisfaction of EPA that all activities required by this Order, including any additional work, payment of all costs, and any stipulated penalties demanded by EPA, have been performed, and EPA has approved the certification set forth in Paragraph 102 below; or (2) the obligation for any remaining work required by this Order is assumed under a different agreement with EPA that is in full force and effect. Respondent's obligation to comply with Sections XVI (Record Preservation), XX (Reimbursement of Response and Oversight Costs), and XXI (Reservations of Rights and Reimbursement of Other Costs), of this Order shall remain in full force and effect without time or other limitation and pursuant to those Sections' terms.

102. The following certification shall be signed by a responsible official on behalf of Respondent:

In accordance with 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States that the information contained in and accompanying this certification is true, accurate, and complete. Dated this \_\_ day of \_\_, 199\_\_.

For purposes of this Order, a responsible official is an official authorized to legally obligate the City of Tacoma.

1  
2 IT IS SO ORDERED, this 23 day of March, 1994.  
3

4 UNITED STATES ENVIRONMENTAL  
5 PROTECTION AGENCY

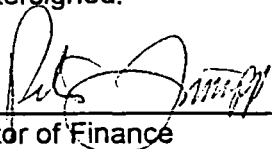
6 By: Carol Rushin  
7 Carol A. Rushin, Chief  
8 Superfund Branch  
9 EPA Region 10  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27



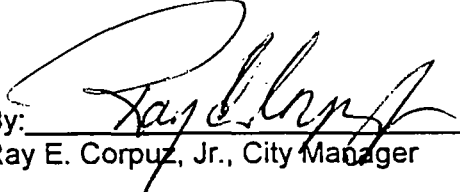
1 RESPONDENT hereby consents to the issuance of this ORDER, and  
2 agrees to abide by each and every provision herein, and to perform  
3 each and every task or requirement herein.

4  
5 IN WITNESS WHEREOF the parties hereto have executed this document as of  
6 the day and year first above written.

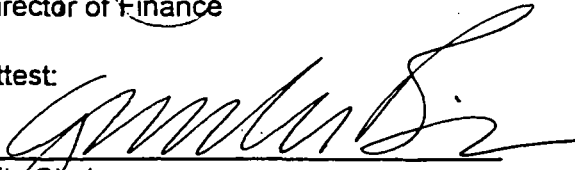
7 Countersigned:

8  
9   
Director of Finance

CITY OF TACOMA

10 By:   
Ray E. Corpuz, Jr., City Manager

11 Attest:

12   
City Clerk

13 Approved as to form:

14   
Assistant City Attorney

15 Approved:

16   
Director of Public Works



## RESOLUTION NO. 32552

1 WHEREAS the head and mouth of the Thea Foss Waterway and Wheeler-Osgood  
2 Waterway have been designated by the United States Environmental Protection Agency  
3 ("EPA") as problem areas of the Commencement Bay Nearshore/Tideflats Superfund site,  
4 and

5 WHEREAS the City of Tacoma voluntarily entered into negotiations with the EPA  
6 to address the concerns relating to the preparation and performance of Remedial Design and  
7 reimbursement of oversight costs incurred in the implementation of the Statement of Work  
8 to be performed by City of Tacoma, and

9 WHEREAS the Council has determined that it is in the City's best interests to  
10 authorize the execution of the Administrative Order of Consent ("AOC") negotiated  
11 between the City and the EPA, and

12 WHEREAS the Appendix I to the AOC, Statement of Work, will require  
13 expenditures in the approximate amount of \$3.7 million, and

14 WHEREAS the City of Tacoma is willing to advance a larger portion of the funding  
15 required to implement the Statement of Work than it believes its apportioned share will  
16 ultimately be; this determination being based upon the current voluntary pledges disclosed  
17 by other Potentially Responsible Parties, and the reliance upon a credit to be attributed to  
18 the City of Tacoma upon the final allocation of costs for work to be performed through  
19 cleanup of the Waterways; Now, Therefore,

### 20 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

21 That the proper officers of the City of Tacoma are hereby authorized and directed to  
22 execute the Administrative Order of Consent with the United States Environmental  
23 Protection Agency, Region 10, in the approximate amount of \$3.7 million, for sediment  
24 remedial design activities in the Thea Foss and Wheeler-Osgood Waterways, said agreement  
25  
26

270



1 to be substantially in the form of the document on file in the office of the City Clerk, and by  
2 this reference fully incorporated herein.

3 Adopted ~~MAR 22 1994~~

4 Mayor

5  
6 Attest: City Clerk

7 GBH/bn

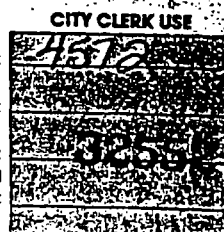
8 Approved as to form and legality:

9   
10 Senior Assistant City Attorney



## REQUEST FOR ORDINANCE OR RESOLUTION

Request #:  
Ordinance #:  
Resolution #:  
Approved Council  
Date:



1. Request Date: January 26, 1994

Requesting Department/Division/Program	Submitted Or Sponsored By	Phone/Extension
2. <u>Legal</u>	<u>J. Lorbeir</u>	<u>5310</u>

3. Preparation of an ~~Ordinance~~/Resolution (indicate which) is requested for the City Council meeting of Tuesday 3-8-94

4. Summary Title: (A brief sentence, as it will appear on the Council Agenda)

Authorizing the City Manager to enter into an Administrative Order of Consent (AOC) with the Environmental Protection Agency (EPA) for sediment remedial design activities in the Thea Foss and Wheeler-Osgood Waterways.

5. Background Information: (Why is this request necessary?) Comments:

The EPA and the City have reached agreement for an AOC for the remedial design phase of the Superfund cleanup of the Thea Foss and Wheeler-Osgood Waterways. Terms of the Order will include sampling and analysis of sediment in the channels and adjoining banks to determine the appropriate cleanup options. Based on this sampling and analysis, and other available data, the City will propose details for the cleanup plan/remedial action activities to EPA.

6. List all material available as backup information for the request and indicate where filed:

Source Documents/Backup Material

Location of Document

Agreed Order of Consent (AOC)

City Clerk

Final Draft Statement of Work (SOW)

City Clerk

7. Funding Source: (Enter amount of funding from each source)

Fund Number & Name: The sampling and analysis required in the design phase will be paid for out of Storm Sewer Utility Funds. The estimated cost will be approximately \$3.7 million.

Federal \$

State \$

City \$

Other \$

3.7 million

Total Amount

If an expenditure, is it budgeted? ☐ Yes ☐ No Where? Org #

Acct #

8. Department Director/Utility Division Approval

Controller

Approved as to Availability of Funds

Director of Finance

City Manager/Director Utilities Approval